

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LONNY BRISTOW,  
Plaintiff,

vs.

Civil Action 2:07-CV-406  
Judge Graham  
Magistrate Judge King

GREG TROUT,  
Defendant.

REPORT AND RECOMMENDATION

Lonny Bristow, currently incarcerated at the Southern Ohio Correctional Facility, seeks leave to bring a civil action for monetary, injunctive and declaratory relief under 42 U.S.C. §1983 without prepayment of fees or costs. Plaintiff's affidavit submitted in support of the application suggests that he does not presently have sufficient assets to pay the \$350 filing fee.<sup>1</sup> However, plaintiff concedes that he has been declared a vexatious litigator within the meaning of O.R.C. §2323.52 by the Crawford County Court of Common Pleas, *see Supplement to Application for Leave to Proceed in forma pauperis*, at 2, Doc. No. 1, and this Court notes that plaintiff has, on more than three (3) prior occasions, brought an action in federal court that has been dismissed as frivolous or as failing to state a claim for relief. See, e.g., *Bristow v. Huffman*, C-1-99-385 (S.D. Ohio, May 24, 1999). Under these circumstances, plaintiff cannot proceed *in forma pauperis* unless plaintiff is presently under imminent danger of serious physical injury. See 28 U.S.C. §1915(g).

The complaint in this action alleges that defendant, Chief Legal Counsel for the Ohio Department of Rehabilitation and Correction,

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<sup>1</sup>The Court notes that plaintiff has failed to submit the certified copy of the trust fund account statement required by 28 U.S.C. §1915(a)(2).

has authorized the opening of plaintiff's legal mail outside plaintiff's presence. *Complaint*, at 2.

The allegations in the complaint fail to establish that plaintiff is under imminent danger of serious physical injury. Under these circumstances, §1915(g) precludes the grant of plaintiff's application for leave to proceed without prepayment of fees or costs.

It is therefore **RECOMMENDED** that plaintiff's application for leave to proceed *in forma pauperis* be **DENIED** and that he be required to pay the full \$350 filing fee within thirty (30) days. Plaintiff should further be advised that his failure to do so will result in the dismissal of the action. See *In Re Alea*, 286 F.3d 378, 382 (6<sup>th</sup> Cir. 2002).

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

October 16, 2007

*s/Norah McCann King*

Norah McCann King  
United States Magistrate Judge